IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3652 of 2007()

CC.83/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED IN CC NO.83/2007:

BOSE V.V., AGED 40 YEARS,
S/O.VASUDEVAN, RESIDING AT VATTAVATHIL HOUSE,
MEZHUVELIL P.O., PATHANAMTHITTA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS: COMPLAINANT IN CC NO. 83/2007:

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1. M/S.CHINAR BUILDERS & CONTRACTORS LTD.,
214, PANAMPILLY NAGAR, KOCHI-36, PRESENTLY
FUNCTIONING AT 2ND FLOOR, MEPPILLIL BUILDINGS,
JANATHA JUNCTION, S.A.ROAD, COCHIN-19,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
MR.RAMESH SHENOY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, SESSIONS COURT, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3652 of 2007

Dated this the 6th day of December, 2007

O R D E R

The petitioner now faces indictment in a prosecution for the offences punishable under Sections 420 and 465 I.P.C. The case has had a chequered history. The complainant had earlier filed a complaint under Section 138 of the Negotiable Instruments Act. Cognizance was taken. Trial commenced. At the fag end of trial, the complainant was taken by surprise with the defence that the cheque was not drawn on the account of the accused. Taken aback by the plea towards the end of trial, the complainant made an attempt to file an application to incorporate the allegation under Section 420 I.P.C also. That application was opposed and evidently the complainant was advised not to further prosecute that case at all. He withdrew the said complaint under Section 138 of the Negotiable Instruments Act. On the very same date, he filed a fresh complaint alleging offences punishable under Sections 420 and 465 I.P.C.

2. The learned Magistrate, after dismissing the earlier complaint under Section 138 of the Negotiable Instruments Act, took cognizance of the offences alleged under Sections 420 and 465 I.P.C against the petitioner in the subsequent complaint filed. The petitioner has entered appearance. The petitioner has, at this stage, come before this Court with a prayer that the prosecution may be quashed invoking the powers under Section 482 Cr.P.C.

3. What is the reason ? The learned counsel for the petitioner submits that principles underlying Article 20(2) of the Constitution and Section 300 Cr.P.C must show that this prosecution against the petitioner is unsustainable and an abuse of process of the Court. The petitioner is being vexed and harassed again on identical allegations by a fresh prosecution launched against him.

4. Having considered the petitioner's contention in detail, I am unable to agree with the same. The allegation raised against the petitioner in the previous prosecution was totally different and had nothing to do with the allegations presently

raised. What was alleged in the previous complaint was only the offence punishable under Section 138 of the Negotiable Instruments Act. No elements of the offence under Section 420 was ever alleged or asserted in the previous complaint.

5. The dishonour of the cheque on the ground of insufficiency of funds and not availing of the opportunities to avoid the prosecution were the gravamen of the complaint in the previous case, whereas the present complaint relates to fraudulent misrepresentation to induce the complainant to part with the cheque. Though the cheque is the common factor in the 2 cases, I must unhesitatingly hold that the nature, content and quality of the allegations in the 2 cases are totally different. The withdrawal and consequent to acquittal of the petitioner in that previous case under Section 138 of the Negotiable Instruments Act cannot be held to be bar in any way against the present prosecution under Sections 420 and 465 I.P.C.

6. This Crl.M.C is, in these circumstances, dismissed. The learned counsel for the petitioner finally prays that the petitioner's right to claim discharge may be protected. Needless

to say that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to claim discharge under Section 245 (2) or 245 (1) Cr.P.C. The petitioner, if he is entitled to such discharge, can certainly stake the claim for premature termination of the proceedings by discharge and needless to say that the learned Magistrate has to consider the same on merits and in accordance with law and pass appropriate orders.

(R.BASANT, JUDGE)

rtr/-